

United States
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Circuit Court of Appeals
For the Ninth Circuit.

JOHN BACIGALUPI,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
First Division.

FILED

MAY 23 1921

F. D. MONCKTON,
CLERK.

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN BACIGALUPI,

Plaintiff in Error,

VS.

THE UNITED STATES OF AMERICA,

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Transcript of Record.

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United States District Court of the
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

For Defendant and Plaintiff in Error:

NATHAN C. COGHLAN, Esq., San Francisco, Cal.

For Plaintiff and Defendant in Error:

UNITED STATES ATTORNEY, San Francisco, Cal.

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California.

Clerk's Office.

No. 8657.

UNITED STATES OF AMERICA

vs.

JOHN BACIGALUPI.

Praeceptum (for Transcript on Writ of Error).

To the Clerk of said Court:

Sir: Please prepare transcript on writ of error, to include the following papers and proceedings, viz: Indictment; demurrer to indictment in case of The United States of America vs. John Bacigalupi, et al., being case No. 8657; motion in arrest of judgment; verdict; judgment; assignment of errors; petition for writ of error; order allowing writ of error; writ of error (original); writ of error (lodged copy); citation on writ of error; minute

orders under dates of Sept. 30, 1920; Oct. 6, 1920; Feb. 8, 1920; Feb. 17, 1920.

NATHAN C. COGHLAN,
Attorney for John Bacigalupi.

[Endorsed]: Filed Mar. 1, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

(Indictment.)

At a stated term of said court, begun and holden at the City and County of San Francisco, within and for the Southern Division of the Northern District of California, on the second Monday in July, in the year of our Lord one thousand nine hundred and twenty,—

The Grand Jurors of the United States of America, within and for the Division and District aforesaid, on their oaths present: THAT

JOHN BACIGALUPI and MARTIN McGOWAN, hereinafter called the defendants, heretofore, to wit, on August 9th, 1920, at San Francisco, in the Southern Division of the Northern District of California, then and there being, did then and there violate a requirement of the Act of December 17th, 1914, entitled, "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose

*Page-number appearing at foot of page of original certified Transcript of Record.

a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24th, 1919, in that being persons required to register under the terms of said Act, they did then and there unlawfully, wilfully, and knowingly have in their possession, with intent to sell, a certain derivative of coca leaves, to wit, eight bindles of cocaine hydrochloride, 13 grains each, and six bindles of cocaine hydrochloride, 6 grains each, without having registered with the Collector of Internal Revenue, and without having paid the special tax as required by the provisions of said Act. [2]

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

SECOND COUNT.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: THAT

JOHN BACIGALUPI and MARTIN McGOWAN, hereinafter called the defendants, heretofore, to wit, on August 9th, 1920, at San Francisco, in the Southern Division of the Northern District of California, then and there being, did then and there violate a requirement of the Act of December 17th, 1914, entitled, "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, dis-

tribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24th, 1919, in that being persons required to register under the terms of said Act, they did then and there unlawfully, wilfully, and knowingly have in their possession, with intent to sell, a certain derivative of opium, to wit, seventeen bindles of morphine sulphate, 6 grains each, and seven bindles of morphine sulphate twelve grains each, without having registered with the Collector of Internal Revenue, and without having paid the special tax required by the provisions of said Act.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided. [3]

THIRD COUNT.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: THAT

JOHN BACIGALUPI and MARTIN McGOWAN, hereinafter called the defendants, heretofore, to wit, on August 9th, 1920, at San Francisco, in the Southern Division of the Northern District of California, then and there being, did then and there violate a requirement of the Act of December 17th, 1914, entitled, "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes,"

as amended February 24th, 1919, in that being persons required to register under the terms of said Act, they did unlawfully, wilfully and knowingly sell, dispense, and distribute, a certain derivative of opium, to wit, six grains of morphine, which said morphine was not then and there in original stamped packages, nor was it taken from original stamped packages.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

FOURTH COUNT.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: THAT

JOHN BACIGALUPI and MARTIN McGOWAN, hereinafter called the defendants, heretofore, to wit, on August 9th, 1920, at San Francisco, in the Southern Division of the[4] Northern District of California, then and there being, did then and there violate a requirement of the Act of December 17th, 1914, entitled, "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24th, 1919, in that being persons required to register under the terms of said Act they did unlawfully, wilfully, and knowingly sell, dispense, and distribute, a certain derivative of coca leaves, to wit, six grains of cocaine,

which said cocaine was not then and there in original stamped packages, nor was it taken from original stamped packages.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

FRANK M. SILVA,

United States Attorney.

[Endorsed]: A true bill. John C. Newlands, Foreman Grand Jury. Presented in open court and ordered filed Aug. 24, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [5]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Thursday, the thirtieth day of September, in the year of our Lord one Thousand and nine hundred and twenty. Present: The Honorable MAURICE T. DOOLING, Judge.

No. 8657.

UNITED STATES OF AMERICA

vs.

JOHN BACIGALUPI.

Minutes of Court—September 30, 1920—
Arraignment.

In this case said defendant was present in court

with attorney, N. C. Coghlan, Esq. W. H. Tully, Esq., Asst. U. S. Atty., was present on behalf of the United States. Said defendant was duly arraigned upon the indictment filed herein, stated his true name to be as contained therein, waived formal reading thereof, and on motion of Mr. Coghlan, the Court ordered that this case be continued to October 2, 1920, for entry of said defendant's plea. [6]

In the Southern Division of the District Court of the
United States for the Northern District of California,
First Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN BACIGALUPI and MARTIN McGOWAN,
Defendants.

Demurrer to Indictment.

Comes now the defendants above named, and demur to each and every and all of the counts set forth in said indictment, and as and for grounds of demurrer, defendants allege:

I.

That the first count of said indictment does not state facts sufficient to constitute an offense against the laws of the United States.

II.

That the said first count of said indictment is un-

certain in that it cannot be ascertained therefrom whether they were persons required to register under the terms of the Harrison Narcotic Act in said count in said indictment more particularly referred to, in that it cannot be ascertained therefrom, and is not alleged therein, whether said defendants are persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or cocoa leaves or their salts, derivatives, preparations, etc.

And demurring to the second count contained in said indictment, defendants allege:

I.

That the second count of said indictment does [7] not state facts sufficient to constitute an offense against the laws of the United States.

II.

That the said second count of said indictment is uncertain in that it cannot be ascertained therefrom whether they were persons required to register under the terms of the Harrison Narcotic Act in said count in said indictment more particularly referred to in that it cannot be ascertained therefrom, and is not alleged therein whether said defendants are persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or cocoa leaves or their salts, derivatives, preparations, etc.

III.

That it does not appear in what capacity said defendants were required to register under the terms of the Harrison Narcotic Act, nor that they were per-

sons required to register under said act, nor whether or not they are persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or cocoa leaves or their salts, derivatives, preparations, etc.

And demurring to the third count contained in said indictment, defendants allege:

I.

That the third count of said indictment does not state facts sufficient to constitute an offense against the laws of the United States.

II.

That the said third count of said indictment is [8] uncertain in that it cannot be ascertained therefrom whether they were persons required to register under the terms of the Harrison Narcotic Act in said count in said indictment more particularly referred to, in that it cannot be ascertained therefrom, and is not alleged therein whether said defendants are persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or cocoa leaves or their salts, derivatives, preparations, etc.

III.

That it does not appear in what capacity said defendants were required to register under the terms of the Harrison Narcotic Act, nor that they were persons required to register under said act, nor whether or not they are persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or cocoa leaves, or their salts, derivatives, preparations, etc.

IV.

That it does not appear from the terms of said count of said indictment, nor can it be ascertained the refrom whether they were persons required to register under the Harrison Narcotic Act, or in what capacity they were required to register under the terms of said act, or whether they were required to register under the said act by reason of the fact that they did produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium, cocoa leaves or their salts, derivatives, preparations, etc.

And demurring to the fourth count of said indictment, defendants allege:

I.

That the fourth count of said indictment does [9] not state facts sufficient to constitute an offense against the laws of the United States.

II.

That the said fourth count of said indictment is uncertain in that it cannot be ascertained therefrom whether they were persons required to register under the terms of the Harrison Narcotic Act in said count in said indictment more particularly referred to, in that it cannot be ascertained therefrom, and is not alleged therein whether said defendants are persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or cocoa leaves or their salts, derivatives, preparations, etc.

III.

That said indictment is uncertain and unintelligible in that it is not therein alleged whether or not

defendants were persons required to register under the terms of the Harrison Narcotic Act.

WHEREFORE, defendants pray that they be hence dismissed, and their bonds exonerated.

NATHAN C. COGHLAN,
Attorney for Defendants.

[Endorsed]: Filed Oct. 6, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Dep.

Overruled.

M. T. DOOLING,
Judge. [10]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Wednesday, the sixth day of October, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable MAURICE T. DOOLING, Judge.

No. 8657.

UNITED STATES OF AMERICA

vs.

JOHN BACIGALUPI and MARTIN McGOWAN.

**Minutes of Court—October 6, 1920—Order
Overruling Demurrer, and Pleas of Defendants.**

This case came on regularly this day for entry of defendants' pleas. Said defendants were present in Court with attorney, N. C. Coghlan, Esq. W. H. Tully, Esq., Asst. U. S. Atty., was present on behalf

of the United States. The Court ordered that the demurrer to the indictment heretofore submitted herein be and the same is hereby overruled, and that defendants plead to indictment. Said defendants were called to plead and each plead "Not Guilty" of the offense charged herein, which pleas the Court ordered and the same are hereby entered. On motion of Mr. Tully, the Court ordered that this case be continued to Nov. 1, 1920, to be set for trial. [11]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Tuesday, the eighth day of February, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable MAURICE T. DOOLING, Judge.

No. 8657.

UNITED STATES OF AMERICA

vs.

JOHN BACIGALUPI and MARTIN McGOWAN.

Minutes of Court—February 8, 1921—Trial.

This case came on regularly this day for the trial of said defendants, who were present in court with attorney, N. C. Coghlan, Esq. W. H. Tully, Esq., Asst. U. S. Atty., was present on behalf of the United States. Upon the calling of the case all parties answering ready for trial, the Court ordered that the

same do proceed and that the jury-box be filled from the regular panel of trial jurors of this court. Accordingly the hereinafter named persons were duly called by lot, sworn, examined, accepted and sworn to try said defendants, viz:

John S. Pinney,	John R. Herman,
Theo. Lerch,	C. B. Hollyhood,
Frank H. Harris,	Ernest S. Jones,
Craig Carrier,	Alfred Madsen,
George P. Caldwell,	M. S. Dodd,
Henry P. Martine,	A. H. Gregory,

Mr. Tully made statement to the Court and jury of the nature of the case and called A. A. Elliott and C. F. Miller, each of whom was duly sworn and examined on behalf of the United States, and introduced in evidence on behalf of the United States certain exhibits, which were filed and marked United States Exhibits Nos. 1 (envelope and contents), 2 (2 small packages), and 3 (letter), and thereupon rested case on behalf of the United States. [12]

Mr. Coghlan then called Martin McGowan (defendant), who was duly sworn and examined on behalf of defendants, and thereupon rested case of defendants.

Mr. Tully called in rebuttal Francis Krull, C. T. Stevenson and E. L. Erwin, each of whom was duly sworn and examined on behalf of the United States.

Mr. Coghlan then recalled Martin McGowan, for further examination, and called A. Giorgi, who was duly sworn and examined on behalf of defendants.

The case was then argued by Mr. Coghlan and Mr. Tully and submitted; whereupon the Court pro-

ceeded to instruct the jury herein, who after being so instructed retired at 3:45 o'clock P. M. to deliberate upon a verdict and subsequently returned into court at 4:15 o'clock P. M., and upon being called all twelve (12) jurors answered to their names, and in answer to question of Court stated that they had agreed upon a verdict and presented a written verdict which the Court ordered filed and recorded, viz: "We, the Jury, find as to the defendants at the bar as follows: John Bacigalupi, Guilty on all 4 counts—Martin McGowan Not Guilty on all 4 counts. Ernest S. Jones, Foreman." Thereupon the Court ordered that the jurors herein be discharged from further consideration of this case and excused from attendance upon the Court until February 17, 1921, at 10 o'clock A. M. Further ordered that defendant, Martin McGowan, be discharged and that he go hence without day as to the indictment herein, and that the bond heretofore given for his appearance herein be and the same is hereby exonerated. After hearing the respective attorneys, the Court ordered that this case be continued to February 15, 1921, for pronouncing of judgment upon defendant, John Bacigalupi, and that in the meantime said defendant go at large upon bond heretofore for his appearance herein. [13]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 8657.

THE UNITED STATES of AMERICA

vs.

JOHN BACIGALUPI and MARTIN McGOWAN.

(Verdict.)

We, the Jury, find as to the defendants at the bar as follows: John Bacigalupi—Guilty on all 4 counts; Martin McGowan—Not Guilty on all 4 counts.

ERNEST S. JONES,
Foreman.

[Endorsed]: Filed Feb. 8, 1921, at 4 o'clock and 15 minutes P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [14].

In the Southern Division of the District Court of the United States for the Northern District of California, First Division.

No.—.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN BACIGALUPI,

Defendant.

Motion in Arrest of Judgment.

Comes now, John Bacigalupi, the defendant named in the above-entitled cause, and against whom a verdict of guilty was rendered against on the 8th day of February, 1921, and moves the above-entitled court to arrest the judgment against him and hold for nought the verdict of guilty rendered against him, for the following reasons:

I.

Because the first count of the indictment on file in the above-entitled cause does not state facts sufficient to constitute an offense against the laws of the United States of America.

II.

Because the said first count of said indictment is uncertain in that it cannot be ascertained therefrom whether said John Bacigalupi was a person required to register under the terms of the Harrison Narcotic Act, in said count of said indictment more particularly referred to, in that it cannot be ascertained in said first count of said indictment, and is not alleged therein, whether said defendant was a person who produced, or imported, or manufactured, or compounded, or dealt in, or dispensed, or sold, or distributed or gave away opium or cocoa leaves or their salts, derivatives, preparations, etc. [15]

III.

Because the second count of said indictment does not state facts sufficient to constitute an offense against the laws of the United States of America.

IV.

Because the said second count of said indictment is uncertain in that it cannot be ascertained therefrom whether the said defendant was a person required to register under the terms of the Harrison Narcotic Act in said count in said indictment more particularly referred to, in that it cannot be ascertained therefrom, and is not alleged therein, whether said defendant was a person who produced, imported, manufactured, or compounded, or dealt in, or dispensed, or sold, or distributed, or gave away opium or cocoa leaves or their salts, derivatives, preparations, etc.

V.

Because it does not appear from and is not alleged in said second count of said indictment in what capacity, if at all, said defendant was required to register under the terms of the Harrison Narcotic Act, nor that he was a person required to register under said act, and it does not appear therein whether or not he was a person who produced, or imported, or manufactured, or compounded, or dealt in, or dispensed, or sold or distributed, or gave away opium or cocoa leaves or their salts, derivatives, preparations, etc.

VI.

Because the third count of said indictment does not state facts sufficient to constitute an offense against the laws of the United States.

VII.

Because the said third count of said indictment is uncertain in that it cannot be ascertained therefrom whether said defendant was a person required to

register under the terms [16] of the Harrison Narcotic Act, in said count in said indictment more particularly referred to, in that it cannot be ascertained therefrom, and is not alleged therein, whether said defendant was a person who produced, or imported, or manufactured, or compounded, or dealt in, or dispensed, or sold, or distributed, or gave away opium or cocoa leaves, or their salts, derivatives, preparations, etc.

VIII.

Because it does not appear in said third count of said indictment, and is not alleged therein, in what capacity said defendant was required to register under the terms of the Harrison Narcotic Act, nor that he was a person required to register under said act, or whether or not he was a person who produced, or imported, or manufactured, or compounded, or dealt in, or dispensed, or sold, or distributed, or gave away opium or cocoa leaves or their salts, derivatives, preparations, etc.

IX.

Because it does not appear from the terms of said third count of said indictment, nor can it be ascertained therefrom, whether said defendant was a person required under the Harrison Narcotic Act, nor in what capacity he was required to register under the terms of said act, or does it appear therein whether he was required to register under the said act by reason of the fact that he did produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium, cocoa leaves or their salts, derivatives, preparations, etc.

X.

Because the fourth count of said indictment does not state facts sufficient to constitute an offense against the laws of [17] the United States.

XI.

Because the said fourth count of said indictment is uncertain in that it cannot be ascertained therefrom whether said defendant was a person required to register under the Harrison Narcotic Act, in said count in said indictment more particularly referred to, in that it cannot be ascertained therefrom, and is not alleged therein, whether said defendant was a person who produced, imported, or manufactured, or compounded, or dealt in, or dispensed, or sold, or distributed, or gave away, opium, or cocoa leaves or their salts, derivatives, preparations, etc.

XII.

Because said indictment is uncertain and unintelligible in that it does not therein allege whether or not defendant was a person required to register under the terms of the Harrison Narcotic Act.

XIII.

Because of each, every and all of the grounds and reasons which are set forth in the demurrer to the indictment herein which is on file in the above-entitled cause.

XIV.

Because on the trial of this cause the evidence was insufficient to show jurisdiction of this court to hear and determine this cause.

WHEREFORE, John Bacigalupi, the said defendant, prays that this his motion be sustained and

that the judgment of conviction against him be arrested and held for nought, and that he have all said other orders as may be just and proper in the premises, and he will ever pray.

NATHAN C. COGHLAN,
Attorney for John Bacigalupi, Def.

[Endorsed]: Filed Feb. 17, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [18]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Thursday, the seventeenth day of February, in the year of our Lord one thousand nine hundred and twenty-one.

No. 8657.

UNITED STATES OF AMERICA

vs.

JOHN BACIGALUPI.

**Minutes of Court—February 17, 1921—Order
Denying Motion in Arrest of Judgment, etc.**

This case came on regularly this day for pronouncing of judgment upon said defendant, who was present in court with attorney, N. C. Coghlan, Esq. W. H. Tully, Esq., Asst. U. S. Atty., was present on behalf of the United States. Said defendant was called for judgment. Thereupon Mr. Coghlan presented and filed motion for new trial, which motion

the court ordered denied. Thereupon Mr. Coghlan presented and filed motion in arrest of judgment, which motion the Court also ordered denied, and to which orders of denial, Mr. Coghlan entered an exception. After hearing the respective attorneys, and no cause appearing why judgment should not be pronounced herein, the Court ordered that said defendant, for the offense of which he stands convicted, be imprisoned for the period of two (2) years in the United States Penitentiary at McNeil Island, State of Washington, and that said defendant stand committed to the custody of the U. S. Marshal to execute said judgment, and that commitment issue accordingly.

Mr. Coghlan thereupon presented and filed petition for writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, assignment of errors, whereupon the Court granted [19] said petition, and ordered that defendant give bond pending the determination of such appeal in the sum of \$5,000.00, and in default thereof said defendant stand committed. On motion of Mr. Coghlan it is further ordered that said defendant have one day within which to give and file such bond, and that in the meantime he go at large upon the bond heretofore given for such appearance. Further ordered that upon the giving and filing of the aforesaid bond, that the bond heretofore given for defendant's appearance herein in the sum of \$2,500.00 be exonerated. [20]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 8657.

Convicted Viol. Harrison Narcotic Act (Act Dec. 17, 1914, as Amended by Act Feb. 24, 1919).

UNITED STATES OF AMERICA

vs.

JOHN BACIGALUPI.

Judgment on Verdict of Guilty.

W. H. Tully, Esq., Assistant United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by the Court of the nature of the indictment filed on the 24th day of August, 1920, charging him with the crime of violating the Harrison Narcotic Act; of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 8th day of February, 1921, to wit:

“We, the Jury, find as to the defendants at the bar as follows: John Bacigalupi Guilty on all 4 counts. Martin McGowan—Not Guilty on all 4 counts.

ERNEST S. JONES

Foreman.”

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein, and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judg-

ment, thereupon the Court rendered its judgment, That, Whereas, the said John Bacigalupi having been duly convicted in this court of the crime of violating the Harrison Narcotic Act;

It IS THEREFORE ORDERED AND ADJUDGED that the said John Bacigalupi be imprisoned for the period of two (2) years in the United States Penitentiary at McNeil Island, State of Washington.

Judgment entered this 17th day of February, A. D. 1921.

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

[Endorsed]: Entered in Vol. 10 Judg. and Decrees, at page 301. [21]

In the Southern Division of the District Court of the
United States for the Northern District of California, First Division.

No. —

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN BACIGALUPI,

Defendant.

Petition for Writ of Error.

To the Honorable Judge of the Above-entitled Court:

Now comes John Bacigalupi, the defendant in the above-entitled cause, and says: That on the 8th day of February, 1921, this Court entered judgment and sentence herein against said defendant, in which said judgment and sentence, as also in the proceedings had prior thereto in this cause, certain errors were committed to the manifest prejudice of this defendant, all of which will appear more in detail in the assignment of errors which is filed with this petition.

WHEREFORE, this defendant prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

JOHN BACIGALUPI,
Petitioner.

NATHAN C. COGHLAN,
Attorney for Petitioner.

[Endorsed]: Filed Feb. 17, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [22]

In the Southern Division of the District Court of the
United States for the Northern District of California,
First Division.

No. —

UNITED STATES OF AMERICA,
Plaintiff,
vs.
JOHN BACIGALUPI,
Defendant.

Assignment of Errors.

Now comes the above-named defendant, and files herein the following assignment of errors upon which he will rely upon his prosecution of the writ of error in the above-entitled cause:

I.

The Court erred in overruling the demurrer of defendant to the indictment on file herein.

II.

The Court erred in denying the motion made by this defendant in arrest of judgment.

WHEREFORE, this defendant prays that the judgment heretofore given and made in and by the said District Court be reversed.

NATHAN C. COGHLAN,
Attorney for said Defendant.

[Endorsed]: Filed Feb. 17, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [23]

In the United States Circuit Court of Appeals for
the Ninth District.

No. 8657.

JOHN BACIGALUPI,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error (and Order Allowing Writ)—Copy.

The President of the United States, to the Honorable Judges of the Southern Division of the District Court of the United States for the Northern District of California, First Division,
GREETING:

Because in the record and proceedings, as also in the rendition of the judgment and sentences in a certain proceeding which is in said District Court before you or some of you, between the United States of America, plaintiff, and John Bacigalupi, defendant, manifest error hath happened, to the great damage of said defendant, as by his complaint appears, and we being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the party aforesaid in his behalf, do command you, if judgment and sentence be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this

writ, so that you have the same at San Francisco, California, in said Circuit on the 21st day of March, 1921, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to [24] correct that error *that* which of right and according to the laws and customs of the United States ought to be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 17th day of February, 1921, in the one hundred and forty-fifth year of the Independence of the United States of America.

[Seal]

Attest: W. B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

And now on this 17th day of February, 1921, it is ordered that the foregoing writ be and is hereby allowed.

M. T. DOOLING,
District Judge.

[Endorsed]: Filed Feb. 17, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [25]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No.—.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN BACIGALUPI,

Defendant.

Citation on Writ of Error—Copy.

To the President of the United States of America, and FRANK M. SILVA, United States District Attorney for the Northern District of California:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Judicial District, to be held at the city of San Francisco, State of California, on the 21st day of March, 1921, pursuant to the writ of error filed in the clerk's office of the Southern Division of the United States District Court for the Northern District of California, First Division, wherein John Bacigalupi, is plaintiff in error and the United States is defendant in error, to show cause, if any there be, why judgment and the said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States

Supreme Court, this 17th day of February, 1921.

M. T. DOOLING,

United States District Judge for the Northern District of Calif.

[Seal] Attest: WALTER B. MALING.

Clerk.

By C. W. Calbreath,

Deputy Clerk. [26]

[Endorsed]: Filed Feb. 17, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [27]

**Certificate of Clerk U. S. District Court to Transcript
on Writ of Error.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 27 pages, numbered from 1 to 27, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the case of the United States of America vs. John Bacigalupi, No. 8657, as the same now remains on file and of record in this office; said transcript having been prepared pursuant to the praecipe for transcript on writ or error (copy of which is embodied in this transcript) and the instructions of the attorney for defendant and plaintiff in error herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ or error is the sum of nine dollars and fifty-five cents (\$9.55), and that the same has been paid to me by the attorney for the plaintiff in error herein.

Annexed hereto are the original writ of error (page 29), return to writ of error (page 32), and original citation on writ of error (page 33).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 21st day of March, A. D. 1921.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [28]

In the United States Circuit Court of Appeals for
the Ninth District.

No.—.

JOHN BACIGALUPI,

Plaintiff in Error.

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error (and Order Allowing Writ)—Original.

The President of the United States, to the Honorable Judges of the Southern Division of the District Court of the United States for the Northern District of California, First Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment and sentences in a certain proceeding which is in said District Court before you or some of you, between the United States of America, plaintiff, and John Bacigalupi, defendant,

manifest error hath happened, to the great damage of said defendant, as by his complaint appears, and we being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the party aforesaid in his behalf, do command you, if judgment and sentence be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, in said Circuit, on the 21st day of March, 1921, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein [29] to correct that error *that* which of right and according to the laws and customs of the United States ought to be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 17th day of February, 1921, in the one hundred and forty-fifth year of the Independence of the United States of America.

[Seal]

Attest: W. B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

And now on this 17th day of February, 1921, it is ordered that the foregoing writ be and is hereby allowed.

M. T. DOOLING,

District Judge. [30]

[Endorsed]: No. 8657. In the United States Circuit Court of Appeals for the Ninth District. John Bacigalupi, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error (and Order Allowing Writ). Filed Feb. 17, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [31]

Return to Writ of Error.

The Answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within Writ of Error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 1st day of March, A. D. 1921, duly lodged in the case in this court for the within named defendant in error.

By the Court:

[Seal]

WALTER B. MALING,
Clerk U. S. District Court, Northern Dist. of California.

By C. M. Taylor,
Deputy Clerk. [32]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN BACIGALUPI,

Defendant.

Citation on Writ of Error—Original.

To the President of the United States of America,
and FRANK M. SILVA, United States District Attorney for the Northern District of California:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Judicial District, to be held at the city of San Francisco, State of California, on the 21st day of March, 1921, pursuant to the writ of error filed in the clerk's office of the Southern Division of the United States District Court for the Northern District of California, First Division, wherein John Bacigalupi, is plaintiff in error and the United States is defendant in error, to show cause, if any there be, why judgment and the said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States Supreme Court, this 17th day of February, 1921.

M. T. DOOLING,
United States District Judge for the Northern District of Calif.

[Seal] Attest: WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk. [33]

[Endorsed]: No. 8657. In the Southern Division of the United States District Court for the Northern District of California, First Division. United States of America, Plaintiff, vs. John Bacigalupi, Defendant. Citation on Writ of Error. Filed Feb. 17, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[Endorsed]: No. 3664. United States Circuit Court of Appeals for the Ninth Circuit. John Bacigalupi, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filed March 21, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.